DEVELOPMENT & COMMERCIAL BANK BHD.

v.

DATO' K.K. SHARMA

HIGH COURT MALAYA, KUALA LUMPUR
ZAKARIA YATIM J
[CIVIL SUIT NO. C3338 OF 1985]
30 SEPTEMBER 1986

CIVIL PROCEDURE: *Appeal against decision of Senior Assistant Registrar refusing to grant plaintiffs' application to enter final judgment against defendant under O. 14 of the Rules of the High Court 1980 - Defendant admitted debt but disputed interest rate - Whether summary judgment could be entered for principal sum only.*

This was an appeal by the plaintiffs against the decision of the Senior Assistant Registrar in refusing to grant the plaintiffs' application to enter final judgment against the defendant under O. 14 of the Rules of the High Court 1980. The plaintiffs' claim was for a sum of RM264,027.57 together with interest accruing thereon at the rate of 14.75% per annum on monthly rests on the first RM70,000 and on the balance thereafter at the rate of 18% per annum on monthly rests from 17 December 1984 to date of full payment and costs. The application for summary judgment was supported by the affidavit of the manager of the Kuala Lumpur branch of the plaintiff bank which *inter alia* included documentary evidence showing that the defendant had admitted the debt *vide* the defendant's letter addressed to the plaintiffs' solicitors dated 2 April 1985 wherein the defendant "proposed an immediate payment of RM10,000 and monthly payment of RM5,000 until account is settled" provided that the plaintiffs charged a reasonable rate of interest.

In response to this letter, the plaintiffs' solicitors wrote to the defendant on 30 April 1985 stating that their clients were agreeable to settling the matter upon certain conditions which *inter alia* included "interest at the usual bank rate to continue to accrue on the outstanding balance to date of full settlement". The defendant replied to the solicitors' letter on 8 May 1985 and requested the plaintiffs' solicitors to reconsider the interest rate.

The defendant's Counsel emphasised the fact that the defendant disputed the interest rate while the Counsel for the plaintiffs asked for summary judgment to be entered against the defendant in the sum of RM150,000. He submitted that the balance on the interest only should be decided at the trial.

Held:

[1] The defendant had not disputed the principal sum he owed the plaintiffs. It was clear that the plaintiffs were entitled to a summary judgment for the sum of RM150,000.

[2] The balance of the amount claimed, that is, on interest only should be decided at the trial.

[Appeal allowed with costs.]

Legislation referred to:
Bankers' Books (Evidence) Act 1949, ss. 3, 4
Rules of the High Court 1980, O. 14

For the plaintiffs - D.P. Naban; M/s. Skrine & Co.
For the defendant - R. Cumarasamy; M/s. Ng Ek Teong & Partners

JUDGMENT

Zakaria Yatim J:

This was an appeal against the decision of the Senior Assistant Registrar given on 27 February 1986 refusing to grant the plaintiffs' application to enter final judgment against the defendant under O. 14 of the Rules of the High Court 1980 for a sum of RM264,027.57 together with interest accruing thereon at the rate of 14.75% per annum on monthly rests on the first RM70,000 and on the balance thereafter at the rate of 18% per annum on monthly rests from 17 December 1984 to the date of full payment and costs.

In their statement of claim, the plaintiffs averred that the defendant was at all material times a customer of the plaintiffs maintaining a current account at their branch at No. 18, Jalan Silang, Kuala Lumpur. The plaintiffs claimed that the sum of RM264,027.57 plus interest were the debit balance outstanding in the defendant's current account with the plaintiffs.

The application for summary judgment was supported by the affidavit of Mr. Wu Foong Chung, the manager of the Kuala Lumpur branch of the plaintiff bank. Attached to the affidavit was an Exhibit, "A1", which was the statement of the defendant's current account with the plaintiffs for the period ending 17 December 1984. The statement showed that the total amount overdrawn by the defendant was RM265,008.70. In para. 3 of the affidavit, Mr. Wu stated that the statement was a copy of an entry from the plaintiffs' books and these books were, at the time of making the entries, ordinary books of the plaintiffs and the entries were made in the usual and ordinary course of the plaintiffs' banking business and that the books were in the custody and control of the plaintiffs. Mr. Wu further stated that the Exhibit "A1" was a true and correct copy of the original statement of account.

I accepted the Exhibit "A1" as *prima facie* evidence of the statement of the defendant's current account with the plaintiffs in view of what was stated by Mr. Wu in para. 3 of his affidavit. In my view the plaintiffs had complied with ss. 3 and 4 of the Bankers' Books (Evidence) Act 1949 (Revised - 1971). The plaintiffs had, therefore, shown that the defendant was indebted to them in the sum stated in the exhibit.

The other documentary evidence showed that the defendant had admitted the debt. On 2 April 1985, the defendant wrote to the plaintiffs' solicitors proposing an immediate payment of RM10,000 and monthly payment of RM5,000 "until account is settled" provided that the plaintiffs charged a reasonable rate of interest. In response to this letter, the plaintiffs' solicitors wrote to the defendant on 30 April 1985 stating that their clients, the plaintiffs, were agreeable to settling the matter upon the following terms:

(i) the sum of RM10,000 to be paid by you within two (2) days of receipt of this letter;

(ii) the balance sum to be settled within one (1) year from the date hereof with a monthly minimum payment of RM5,000;

(iii) that in the event of your failure to make payment of the minimum payment of RM5,000 per month the whole of the balance sum to become due and payable immediately;

(iv) interest at the usual bank rate to continue to accrue on the outstanding balance to date of full settlement;

(v) that the above shall not in any way prejudice our clients to continue or commence fresh proceedings.

On 8 May 1985, the defendant replied to the solicitors' letter and in his reply he stated:

"I refer to your letter of 30th April, 1985

Conditions (i), (ii) and (iii) are acceptable. Please reconsider the interest rate and let me have your client's final decision. I trust they will be able to accommodate because the difference is really very small. If regular payments are maintained, your (v) condition is unfair which I would like you to waive.

On receipt of your favourable response in respect of conditions (iv) and (v) of your letter, I will arrange for immediate payment RM10,000.

Yours faithfully
Sgd/-
Dato' K.K. Sharma"

Although the defendant had admitted the debt as seen from these letters, he seemed to be disputing the interest rate charged by the plaintiffs. Miss Cumarasamy, counsel for the defendant, in her submission emphasised the fact that the defendant disputed the interest rate.

Mr. P. Naban, counsel for the plaintiffs, asked for summary judgment to be entered againts the defendant in the sum of RM150,000. According to him the balance on the interest only should be decided at the trial.

I agree with Mr. Naban's submission. Since the defendant had not disputed the principal sum he owed the plaintiffs I think the figure RM150,000 could not have included interest. It was clear that the plaintiffs were entitled to a summary judgment for the sum. I accordingly set aside decision of the Senior Assistant Registrar and entered judgment for the plaintiffs in the sum RM150,000 with costs. I ordered that the balance of the amount claimed, that is, on interest only should be decided at the trial.

Also found at [1987] 1 CLJ 268